

EXHIBIT 150

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
BERGEN COUNTY
DOCKET NO. BER-L-7987-20
APP. DIV. NO. _____

URBAN EDGE PROPERTIES,	:	
AND URBAN EDGE	:	
PROPERTIES LP,	:	
	:	
Plaintiffs,	:	TRANSCRIPT
	:	
v.	:	OF
	:	
ALLIED WORLD ASSURANCE	:	MOTION FOR
COMPANY (U.S.) INC., AND	:	RECONSIDERATION
GREENWICH INSURANCE	:	
COMPANY,	:	
	:	
Defendants.	:	

Place: Bergen County Courthouse
(Heard via Zoom)

Date: February 17, 2023

BEFORE:

HONORABLE DAVID V. NASTA, J.S.C.

TRANSCRIPT ORDERED BY:

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Weiss, LLC)

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I N D E X

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**Note: Due to the remote nature of the proceedings the attorneys were difficult to discern, resulting in instances of (indiscernible) throughout the transcript.

1 (Proceedings commenced at 11:34:00 a.m.)
2 COURT CLERK: Judge, we're on the record.
3 THE COURT: Okay. Thank you. Okay. Good
4 morning, counsel. Thank you for your patience. As
5 usual running a bit behind. This is the matter of
6 Urban Edge Properties v. Allied World Assurance
7 Company. This is Bergen Docket L-7987-20.
8 Counsel, may we have appearances for the
9 record, please?
10 MR. WEISS: Good morning, Your Honor.
11 Christopher Weiss of Ferro LaBella & Weiss on behalf of
12 the plaintiffs, Urban Edge Properties and Urban Edge
13 Properties LP.
14 THE COURT: Good morning, counsel.
15 MR. ZOLA: Good morning, Your Honor. Jared
16 Zola from Blank Rome, LLP. Also for Urban Edge. And
17 with me is my partner, Kyle Brinkman from Blank Rome,
18 and Robert Milton, our client representative, general
19 counsel of Urban Edge.
20 THE COURT: Thank you. Thank you, Mr. Zola.
21 MR. ZOLA: Thank you, Your Honor.
22 MR. DENNISON: Good morning, Your Honor.
23 Greg Dennison of Saiber, LLC on behalf of Allied World
24 Assurance Company. I'm joined here this morning by my
25 colleagues Lisa Wood and Rafael Llano, as well as our

1 client representative, Adam Keating.
2 THE COURT: Okay. Thank you, Mr. Dennison.
3 I think that covers everyone, I'm guessing. Have I
4 missed anyone? No? Okay.
5 So, we have before us -- this is a motion for
6 reconsideration filed by defendant Allied World. So,
7 Mr. Dennison, the ball is in your court. The Court
8 will hear you.
9 MR. DENNISON: Thank you, Your Honor. As
10 indicated in our papers we are challenging two very
11 discrete findings the Court made in its decision on the
12 motion for summary judgment.
13 The first one occupies most of the -- mostly
14 when you're looking at our papers, it is simply the
15 causation element in the -- of the business
16 interruption (indiscernible). Summarizing, in the
17 general form the policy requires a pollution incident,
18 which we have -- which we are, you know, acknowledging
19 here is COVID-19. It requires a suspension of
20 operations, which Your Honor found in its decision,
21 which we are not challenging today. And it requires
22 causation. The closure has to be caused by the
23 presence of COVID at the properties.
24 Your Honor grappled with the policy language,
25 which required the -- the suspension be solely and

1 directly caused by the pollution incident, here COVID.
 2 Your Honor, I formulated that language and
 3 (indiscernible) that language to require independent
 4 and sufficient proximate cause. We submit to Your
 5 Honor that the decision on -- the January 10th decision
 6 did not then complete the analysis by identifying what
 7 issue of fact exists as to whether or not the presence
 8 of COVID at these -- and all the locations that did not
 9 pay the rent was -- what was -- the causation element
 10 was fine, but there is no evidence that any of these
 11 tenants did not pay rent independently because of the
 12 presence of COVID (indiscernible).

13 That, I think, really sums it up as neatly as
 14 we can make it, and the Court found that the presence
 15 of COVID, I think the dispute largely in this case
 16 turns on the last paragraph of the Court's opinion on
 17 Page 16, where the Court says it can reasonably be
 18 argued that it was the presence of COVID that
 19 (indiscernible) on or under these scheduled locations
 20 that caused business interruption.

21 Well, the evidence actually shows pretty much
 22 exactly the opposite. The evidence shows that all the
 23 tenants that didn't pay rent closed on the day the
 24 orders -- that the government orders came into effect,
 25 requiring their closure. The only tenants that didn't

1 pay rent were the non-essential tenants affected by
 2 these orders. And the tenants resumed operations the
 3 day the orders were lifted.

4 In order to satisfy this standard Urban Edge
 5 has to put forth evidence that these tenants who were
 6 closed did not pay rent independently of closing. That
 7 was it, that the orders -- if you take away the orders,
 8 (indiscernible) these tenants (indiscernible). As our
 9 papers put forth there is no evidence in the record
 10 that this happened.

11 And our position, which identified
 12 (indiscernible) they set aside the standard. In our
 13 reply letter brief I addressed each one of them in
 14 summary fashion, that says no, that's not correct. The
 15 -- they point to the fact that their headquarters were
 16 closed. There was a sick employee which closed their
 17 headquarters. Well, they're not seeking credit from
 18 their own headquarters. They had -- their own
 19 headquarters, a closure from headquarters is not part
 20 of this case. That's the first two -- two elements
 21 right there. It's, you know, the first two points they
 22 made. It's not part of the case.

23 They point to their expert, Dr. Moyé. Dr.
 24 Moyé is a medical statistician. He testified expressly
 25 it was not a (indiscernible) causation. The -- they

1 point to their tenant assistance program which has
 2 nothing to do with the finding that there was COVID on
 3 these locations, and that's what caused these tenants
 4 to not pay their rent. They talk about -- claims --
 5 testimony from our claims (indiscernible), who said,
 6 yeah, we were asking for information throughout the
 7 claims process from them, and they never gave it to us.
 8 The question (indiscernible) was was this the kind of
 9 information that he would consider? Yeah. He would
 10 consider it, but it's not evidence of -- you know, of a
 11 closure caused by COVID-19 at a property.

12 The property closed because the orders
 13 closed the -- because the businesses were shut down,
 14 the non-essential businesses.

15 The certifications are the only -- the two
 16 affidavits they put forth are the only evidence, or the
 17 only purported evidence that anything was closed
 18 because there was COVID at their properties. These
 19 affidavits are hearsay, and they make no argument to
 20 the contrary. They point to no exceptions of the
 21 hearsay rule that would permit a witness on behalf of
 22 Urban Edge to come forward and testify to what other
 23 people told him. They are putting that forth for the
 24 truth of the matter asserted.

25 They (indiscernible) pages talking about the

1 presence of COVID. Well, that goes to whether or not
 2 COVID was present, not to causation. We are not -- on
 3 this motion we are not arguing COVID wasn't present.
 4 We are just saying it had nothing to do with the
 5 closure. The closures were a hundred percent caused by
 6 the government orders that went into effect.

7 And then finally they want to (indiscernible)
 8 their own witness, who testified to the opinion
 9 (indiscernible) that it was because of both the orders
 10 and because of the presence of COVID. But when pressed
 11 he admitted that there was no way for him to know that,
 12 he was speculating, and Urban Edge didn't maintain any
 13 such records that would allow him to make that
 14 statement factually. Simply recording of the --
 15 repeating a (indiscernible) position is not evidence.
 16 You know, when pressed on the facts behind that he
 17 admitted that he was speculating.

18 So, what we -- what we are arguing here today
 19 is the Court's opinion in January didn't go quite far
 20 enough. It didn't address this one issue. What is the
 21 causal language? Your Honor formulated (indiscernible)
 22 required an independently sufficient proximate cause.
 23 The presence of COVID, irrespective of the orders,
 24 would have had to cause these closures and failure to
 25 pay rent at the time (indiscernible) in this case.

1 And we respectfully submit that there is no
2 evidence, that the Court's opinion just doesn't quite
3 go far enough and doesn't address the issue.

4 THE COURT: Okay. Thanks.

5 MR. DENNISON: The second thing we --

6 THE COURT: Sure.

7 MR. DENNISON: -- pointed to the evidence,
8 Urban Edge's argument that they didn't -- they were not
9 obligated to comply with the requirements -- that they
10 get permission from Allied World before they incur any
11 costs or any liabilities. And there's no question, and
12 the Court, you know, correctly looked at that and said,
13 yes, that that is the law, and there is no -- there's
14 no dispute as to whether or not they didn't get
15 permission.

16 The argument they (indiscernible) to put
17 forth is that they were -- that they (indiscernible)
18 contract, and was -- had disclaimed as early as April
19 of 2020. But they put forth no evidence. They made
20 arguments based upon documents that are in the record.
21 They don't make -- there's no evidence to support this
22 position, we believe. There's no contemporaneous
23 writings. In fact, the only contemporaneous writing
24 that exists is the e-mail sent by their general counsel
25 (indiscernible) July 2020 conference call where he says

1 thank you for clarifying that we have not disclaimed.
2 They knew full well they didn't disclaim.

3 So we submit that there's simply -- the
4 arguments that they made were just that. There was no
5 fact, that they put forth no evidence as to a
6 reasonable belief that Allied World had disclaimed.

7 THE COURT: Okay. Thank you, Mr. Dennison.
8 We'll hear opposition.

9 MR. ZOLA: Good morning, Your Honor. Gary
10 Zola for Urban Edge.

11 THE COURT: Thank you, Mr. Zola.

12 MR. ZOLA: Your Honor, AWAC did not meet its
13 burden for reconsideration. (Indiscernible) Lawson
14 from the Appellate Division in 2021 in which a new
15 judge in a new county was asked to reconsider an
16 interlocutory discovery order issued by a prior judge
17 in a prior county nine months earlier. The Court in
18 that case erred by applying an arbitrary and capricious
19 standard to reconsider an interlocutory order. AWAC
20 misstates Lawson by omission. Here's what Lawson says.
21 Quote, to be sure, some reconsideration motions are
22 frivolous, vexatious or merely repetitious, and some
23 constitute an unwarranted attempt to reverse matters
24 previously decided solely because the prior judge is no
25 longer available, but some reconsideration motions

argued in good faith, a prior mistake, a change in circumstances, or the Court's misappreciation of what was previously argued.

Lawson goes on to cite Rule 4:42, (indiscernible) orders are subject to revision, quote, in the sound discretion of the Court, in the interest of justice. Lawson cites Lombardi, New Jersey Supreme Court 2011. Courts reconsider interlocutory orders, quote, only for good cause shown in the service of the ultimate goal of substantial justice. AWAC has not met any of Lawson's elements of reconsideration.

In the 20 days between the Court's January 10th order denying AWAC's motion for summary judgment on business interruption and waiver and AWAC's motion for reconsideration of that order nothing has changed. Your Honor is still the presiding judge. There was no prior mistake identified, no change in circumstance, and the Court did not misappreciate what the parties previously argued.

Quite to the contrary. Regarding business interruption AWAC argued on summary judgment, and the Court rejected it, quote, but for the government orders the properties would have remained open. And that's a direct quote from Your Honor's order on Page 5.

During oral argument in December Your Honor

was laser focused on this issue and questioned counsel for AWAC for several pages on this exact point, Pages 24 to 31.

On the waiver point AWAC argued and in part rejected, AWAC, quote, did not deny coverage to Urban Edge at these times -- at the time these abatements were granted. That's a quote from Your Honor's order at Page 8, and Your Honor was equally as focused and gave careful consideration to this exact point at oral argument back in December, Pages 64 to 68. There was no mistake. The Court did not misappreciate the arguments. They were carefully considered by the Court.

AWAC's motion doesn't even attempt to show good cause. (Indiscernible) words one time, doesn't mention any need to advance the ultimate goal of substantial justice. It doesn't say it once. AWAC merely seeks to reargue exactly what this Court already decided on January 10th in a thorough, clear, well-reasoned, carefully considered order on business interruption, pay waiver and mitigation.

AWAC spent seven single-spaced pages on the reply, again, trying to argue away the existence of evidence that merely highlights the factual dispute for trial. That evidence, when viewed in the light most

1 favorable to Urban Edge, and accepting it as true, as
 2 the New Jersey Supreme Court requires of summary
 3 judgment, and affording Urban Edge all legitimate
 4 inferences which can be deduced from that evidence, as
 5 the Supreme Court requires, then if the Court already
 6 correctly held on January 10th there exists genuine
 7 issues of material fact for trial, because, one,
 8 regarding business interruption it could be reasonably
 9 argued that it was the presence of the COVID-19 virus
 10 on, at or under Urban Edge's locations that caused
 11 Urban Edge's interruptions, the quote from Page 16 of
 12 Your Honor's order; and two, regarding waiver and
 13 mitigation, quote, whether coverage was repudiated is a
 14 question of fact for the jury, and both parties in
 15 their briefs and at oral argument presented evidence
 16 that coverage was or was not disclaimed. Page 20 of
 17 Your Honor's order.

18 And Your Honor got it exactly right. There
 19 is no basis to reconsider the Court's January 10th
 20 order, and the Court should dispose of this motion with
 21 a one word order, denied.

22 Unless the Court has any questions for me,
 23 which I would be pleased to answer, Urban Edge rests on
 24 its papers.

25 THE COURT: Thank you, Mr. Zola. I

1 appreciate that. Mr. Dennison, anything in reply?

2 MR. DENNISON: Your Honor, if I may briefly?
 3 I just want to briefly address one issue or two issues
 4 that --

5 THE COURT: Yes.

6 MR. DENNISON: -- Mr. Zola (indiscernible).
 7 As to the -- (indiscernible) repetitious of the prior
 8 summary judgment motion, I am a little (indiscernible)
 9 on this case. The reason that -- the Court formulated
 10 a causation standard that neither side addressed in its
 11 motion, which was (indiscernible) sufficient proximate
 12 cause. However, (indiscernible) solely that there's an
 13 epidemic, Urban Edge argued (indiscernible) the Court
 14 found a third way, a different -- didn't agree with
 15 either side on that.

16 So, what we are addressing here is an issue
 17 that was never -- has never been briefed, was never
 18 argued back in December, simply that there is no ends
 19 to support even the -- even with the standard the Court
 20 found applicable, even (indiscernible) there was no
 21 evidence to support the Court's finding.

22 And addressing the reason -- the sentence Mr.
 23 Zola just addressed on -- or raised on Page 16 in the
 24 brief where the Court concluded it can be reasonably
 25 argued that it was the presence of COVID on, at or

1 under the scheduled location that caused the business
 2 interruptions. Well, I think the -- that sentence is
 3 really almost the entire focus of this motion. We
 4 disagree. and for the reasons set forth in our -- our
 5 reply papers, and the initial -- initial moving papers.

6 THE COURT: Okay. Thank you, Mr. Dennison.
 7 I appreciate it. Any other counsel wish to be heard?
 8 Okay. It does not appear to be the case.

9 UNIDENTIFIED ATTORNEY: No.

10 THE COURT: Okay. We have no's across the
 11 board. All right. Excellent. Thank you. Mr.
 12 Dennison, thank you. Mr. Zola, thank you. Again, as
 13 usual and as expected the papers and briefing were
 14 thorough. The arguments, of course, were excellent.
 15 Again, we're dealing with some of the best counsel
 16 around.

17 What the Court has before it this morning is
 18 a motion for reconsideration filed by defendant Allied
 19 World Assurance Company, and the question presented to
 20 it is whether it is in the interest of justice to
 21 reconsider the Court's January 10, 2023 order granting
 22 in part and denying in part I'll call it AWAC's, for
 23 short, motion for summary judgment.

24 AWAC, in its moving papers, and plaintiff in
 25 opposition have produced vol -- voluminous, excuse me,

1 records of the facts and arguments in support of their
 2 positions in this insurance dispute, and presented them
 3 to this Court on AWAC's motion for summary judgment.
 4 The Court heard oral argument on December 16, 2022, and
 5 issued a written decision on January 10, 2023.

6 This Court relied on all of the evidence
 7 presented to it at oral argument and in the moving
 8 papers and attached exhibits. The Court studied the
 9 insurance policy drafted by AWAC and sold to the
 10 plaintiff, analyzed the facts as presented in the
 11 parties' exhibits and statements of fact, and read
 12 dozens of cases from courts across the country at the
 13 trial, at appellate levels, as well as the state and
 14 federal levels, in order to reach its decision.

15 This Court will not reiterate the facts of
 16 this case as they were presented to it on the initial
 17 motion for summary judgment, nor will it reiterate its
 18 own statement of facts as written in the January 10
 19 decision.

20 This Court directs the party to its --
 21 parties to its January 10 decision for discussion of
 22 the most relevant facts it considered, and to the
 23 moving papers and exhibits for a complete record of the
 24 facts.

25 This Court will also use the terms as defined

1 in its January 10 decision. Specifically, Rule 4:42-2
 2 provides that, quote, any order or form of decision
 3 which adjudicates fewer than all the claims as to all
 4 the parties shall not terminate the action as to any
 5 claims, and it shall be subject to revision at any time
 6 before the entry of final judgment in the sound
 7 discretion of the Court and in the interest of justice.

8 This Court is permitted to amend its January
 9 10 order because it merely granted partial summary
 10 judgment on the issue of contingent business
 11 interruption. The issues of business interruption
 12 coverage and waiver have been left open to a trier of
 13 fact.

14 The Court will now address the points raised
 15 by AWAC to challenge this Court's January 10 decision.
 16 This Court interpreted the word solely to require that
 17 the pollution incident covered by the policy be a
 18 sufficient cause of the business interruption. This
 19 Court did not interpret the word solely to require the
 20 pollution incident to be a necessary cause and rejected
 21 outright AWAC's contention that it be an exclusive
 22 cause. In exceedingly simple terms this Court found
 23 that there was enough evidence that the pandemic caused
 24 the closure orders which caused Urban Edge's tenants to
 25 close, which caused Urban Edge to experience a business

1 interruption in order to deny summary judgment.

2 AWAC is partially correct in stating that
 3 this Court requires Urban Edge to produce evidence that
 4 COVID-19 was alone sufficient to cause an interruption
 5 of its operation. More precisely, Urban Edge was
 6 required to produce evidence that a pollution incident,
 7 here being COVID-19, was a sufficient but not exclusive
 8 proximate cause of its business interruption. This
 9 Court found that Urban Edge produced enough evidence
 10 that the COVID-19 pandemic set in motion a chain of
 11 events which resulted in a business interruption for
 12 the purposes of defeating summary judgment.

13 This Court cited cases which acknowledged, as
 14 this Court does as well, that the closure orders were
 15 obviously proximately caused by the pandemic.

16 Applying Appleman's rule on causation and
 17 proximate cause standards this Court held that there
 18 was enough evidence that the pandemic was a sufficient
 19 cause of the business interruption for the purposes of
 20 denying summary judgment.

21 If AWAC requires the Court to point to a
 22 specific piece of evidence in the record it need only
 23 look at its own motion papers, which attempted to show
 24 an alternate cause for Urban Edge's interruption, the
 25 closure orders.

1 AWAC pointed out that Urban Edge's tenants
 2 closed at the same time the closure orders were issued
 3 in an attempt to show that the orders, not a pollution
 4 incident, caused the business interruption. This Court
 5 held for purposes of denying summary judgment that the
 6 closure orders fell in the chain of causation started
 7 by COVID-19 and ending in a business interruption.
 8 Appleman's rule supports this conclusion as discussed
 9 in greater detail in the January 10 decision.

10 AWAC also graciously provides evidence in its
 11 brief for its motion -- for this motion for
 12 reconsideration which supports this Court's January 10
 13 decision.

14 Joe DiGiorgio and Roger Real stated that
 15 certain tenants closed their retail locations because
 16 of sick employees. This Court need not engage in
 17 mental gymnastics to link the closure of a tenant's
 18 storefront with potential -- with its potential
 19 inability to pay rent.

20 This Court decided that the closure orders
 21 fell in a chain of proximate causation that began with
 22 the COVID-19 pandemic, which was, quote, practically
 23 everywhere, including on, at or under the scheduled
 24 locations and ended with business interruption. The
 25 government orders are therefore an integral part of

1 this chain of proximate causation. Thus, this Court
 2 did not conflate the analysis of business interruption
 3 and contingent business interruption. Indeed, this
 4 Court granted summary judgment -- granted summary
 5 judgment to AWAC on this issue of contingent business
 6 interruption while it denied summary judgment on the
 7 issue of business interruption.

8 The parties clearly have different views on
 9 whether coverage was repudiated. There is at best
 10 little evidence that AWAC unequivocally acknowledged
 11 coverage for the claimed business interruptions. This
 12 lawsuit is glaring evidence to the contrary.

13 There is also at best little evidence that
 14 AWAC unequivocally disclaimed coverage. This is to be
 15 expected given the sophistication of the parties and
 16 their respective abilities to negotiate. There is,
 17 however, a great deal of evidence that the parties
 18 discussed coverage and could not reach an agreement.

19 As discussed, in the January 10 decision this
 20 undisputed fact of disagreement and the contents of all
 21 communications provided in the motion papers and
 22 exhibits for summary judgment led this Court to believe
 23 that a reasonable jury could find a disclaimer. AWAC
 24 is free to argue at trial that it never disclaimed
 25 coverage while it refused to pay Urban Edge's claim for

business interruption.

This Court does not believe that it is in the interest of justice to reconsider its January 10 decision. No new evidence has been presented to the Court to justify its vacation. This Court thanks AWAC for the opportunity to revisit its January 10 decision but declines to disturb it. The motion for reconsideration is denied. Again, thank you to all counsel for your submissions and your arguments today. They are well appreciated. I wish everyone the best, a safe and happy weekend. Any counsel with any further comment?

UNIDENTIFIED ATTORNEY: No. Thank you, Your Honor.

THE COURT: Thank you. Okay. Counsel?

MR. DENNISON: Your Honor -- no. We'll have to (indiscernible) the transcript to fully understand what you said. I don't want to ask you to clarify things without having an opportunity.

THE COURT: I suspect that you will do so. But for the reasons stated on the record this morning. Thank you. I appreciate it, Mr. Dennison. Have a good afternoon.

MR. DENNISON: Thank you, Your Honor.
(Proceeding concluded at 11:59:40 a.m.)

CERTIFICATION

I, TAMMY DeRISI, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on CourtSmart, Index No. from 11:33:55 to 11:59:41, is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings, as recorded.

/s/ Tammy DeRisi

Tammy DeRisi

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02/19/23

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